IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.194 OF 2006

Vinayak Purushottam Dube. ..Applicant.

V/s.

Madhukar Ganesh Buchake. ..Respondent.

Mr.V.S.Gokhale for applicant.

Mr.V.G.Mujumdar for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 19, 2007.

P.C. :

1. Heard counsel for the parties.

2. Rule. Rule made returnable forthwith by consent. Mr.Mujumdar waives notice for the respondent.

3. As short question is involved, revision application is taken up for final hearing forthwith by consent.

4. This revision application takes exception to the Judgment and order passed by the Civil Judge, Senior Division, Pune dated 31st August, 2006 in Special Summary Civil Suit No.162 of 2005, granting

conditional leave to the applicant to defend the suit on deposit of Rs. One Lakh in the Court within one month from the date of the order.

5. From the pleadings on record, particularly, adverting to the plaint as filed by the respondent/plaintiff, it is seen that the claim of the plaintiff is on the basis of loss suffered by the plaintiff and that the plaintiff was forced to enter into an agreement with third party for the same subject matter. After going through the averments in the plaint, I have no hesitation in accepting the argument of the applicant/defendant that the subject matter of the suit was surely not covered within the parameters of order 37 of C.P.Code. By no stretch of imagination, such a suit can be allowed to proceed under Order 37 of C.P.Code. Thus understood, instead of granting conditional leave to the defendant, the defendant should be granted unconditional leave. The revision succeeds and the order of the trial Court is modified to that extent. Ordered accordingly.

6. It is made clear that the suit will have to be decided on its own merits, uninfluenced by the observations made in the impugned order or for that matter the present order. The trial Court to proceed

with the suit as per its turn, under appropriate category.